

ANGELA GATERMAN and  
ROBERT A. PAULI, JR.,

**V.**

## Defendants.

**MOTION FOR DEFAULT JUDGMENT**

1. Deeming all facts alleged in Plaintiffs' Complaint as admitted by Defendants;

2. Holding, for the reasons explained in ¶ 88 of Plaintiffs’ Complaint, that Defendants violated the following section of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (“FDCPA”):

- a. Section § 1692i, by filing a lawsuit against Plaintiff Robert A. Pauli, Jr. in New York City, even though, at the time, Mr. Pauli resided in

Missouri, and Mr. Pauli had signed the contract sued upon in Missouri;

- b. Sections 1692e, e(2), e(5), and e(10), by falsely representing that Defendants had the legal right to sue on a debt that had already been extinguished, and by falsely representing that EDS Management Corp. had the legal right to sue Plaintiffs; and
- c. Sections 1692e, e(3), and e(10), by falsely representing that an attorney had meaningfully reviewed the pleadings in the New York City lawsuit, *see, e.g., Morgan v. Vogler Law Firm, P.C.*, Case No. 4:15-CV-1654 SNLJ, 2016 U.S. Dist. LEXIS 95781 at \*11-12 (E.D. Mo. July 22, 2016); *see also Clomon v. Jackson*, 988 F.2d 1314, 1320-21 (2d Cir. 1993).

3. Holding that, under the common law of the state of Missouri, Defendants committed the tort of malicious prosecution against Plaintiffs, in that:

- a. A lawsuit was commenced against Plaintiffs in the New York City Civil Court in December 2016;
- b. Said lawsuit was instigated by Defendants;
- c. The lawsuit has terminated in Plaintiffs' favor, *see Exhibit A* to accompanying Declaration of Plaintiff Angela Gaterman ("Gaterman Decl.");
- d. Defendants lacked any probable cause to file the lawsuit, in that Defendant had voluntarily dismissed identical claims *with prejudice* just two months earlier;
- e. Defendants' actions were malicious, as demonstrated by the fact that Defendants continued to maintain the lawsuit, and even applied for a default judgment, after they had

been warned that their lawsuit was frivolous,  
and by other facts to be obtained in an  
anticipated deposition of Defendants; and

- f. Plaintiffs sustained damage, as explained in the  
Gateman Decl.

*See State ex rel. O'Basuyi v. Vincent*, 434 S.W.3d 517 (Mo. banc 2014).

4. Holding that Plaintiffs are entitled to recover the sum certain of  
\$4,593.75 from Defendants;

5. Granting Plaintiffs leave to take discovery on the issue of  
malice, for the purposing of establishing liability and punitive damages on  
Plaintiffs' malicious prosecution claim;

6. Scheduling an evidentiary hearing to determine the amount of  
Plaintiffs' emotional distress damages and the amount of punitive damages  
against Defendants;

7. Holding, for purposes of 15 U.S.C. § 1692k(a)(3), that Plaintiffs  
are the prevailing parties in this action, and setting deadlines for Plaintiffs to  
petition this Court for the costs of this action, together with a reasonable  
attorney fee; and

8. Such other and further relief as the Court may deem just and  
equitable.

Dated: Winston-Salem, NC  
April 5, 2018

/s/ Jonathan R. Miller  
Jonathan R. Miller  
One of Plaintiffs' Attorneys

**Attorneys for Plaintiffs**

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